

3-209A046

Taylor, Morell & Gitomer

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July 28, 1993

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18349
RECORDATION NO. FILED 1425

JUL 28 1993 3:05 PM

Honorable Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423

INTERSTATE COMMERCE COMMISSION

Dear Secretary Strickland:

I have enclosed an original and certified copy of the document described below, to be recorded pursuant to 49 U.S.C. § 11303.

The document is an Equipment Lease Agreement, a primary document, dated June 15, 1993. We request that this document be recorded under a new Recordation Number.

The names and addresses of the parties to the Equipment Lease Agreement are as follows:

Lessor:

GATX Capital Corporation
Four Embarcadero Center
San Francisco, CA 94111

Lessee:

Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613

A description of the equipment covered by the document consists of 120 4000 cu. ft., 100-ton hopper cars with rotary couplers numbered UFIX 90016, 90021, 90023, 90024, 90027, 90034, 90039, 90045, 90065, 90071, 90076, 90085, 90099, 90111, 90116, 90117, 90120, 90121, 90124-90127, inclusive, 90131-90137, inclusive, 90166, 90169, 90182, 90189, 90196, 90197, 90199, 90202-90204, inclusive, 90217, 90221, 90223, 90229, 90233, 90234, 90237, 90239, 90240, 90243, 90247-90250, inclusive, 90252, 90254, 90256, 90258, 90260, 90263, 90264, 90267, 90269, 90271-90274, inclusive, 90277, 90285-90287, inclusive, 90289, 90293, 90294, 90296, 90297, 90303, 90308, 90319-90321, inclusive, 90325, 90327, 90332, 90333, 90335, 90342, 90345, 90351-90356, inclusive, 90358, 90363, 90364, 90379, 90381, 90383-90385, inclusive, 90388, 90389, 90399, 90402, 90422-90424, inclusive, 90426, 90431, 90434, 90437, 90441, 90453, 90456, 90457, 90459, 90461, and 90463.

28 2 58 PM '93
RECORDING UNIT

Janice S. Holzer
C. D. Dwyer

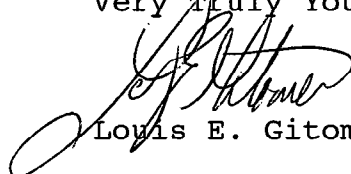
Honorable Sidney L. Strickland
July 28, 1993
Page 2

A fee of \$16.00 is enclosed. Please return the original to:

Louis E. Gitomer
Taylor, Morell & Gitomer
Suite 210
919 18th Street, N.W.
Washington, DC 20006

A short summary of the document to appear in the index follows: an Equipment Lease Agreement, dated June 15, 1993, between GATX Capital Corporation, Four Embarcadero Center, San Francisco, CA 94111, and Wheeling & Lake Erie Railway Company, 100 East First Street, Brewster, OH 44613, covering 120 4000 cu. ft., 100-ton hopper cars with rotary couplers numbered UFIX 90016, 90021, 90023, 90024, 90027, 90034, 90039, 90045, 90065, 90071, 90076, 90085, 90099, 90111, 90116, 90117, 90120, 90121, 90124-90127, inclusive, 90131-90137, inclusive, 90166, 90169, 90182, 90189, 90196, 90197, 90199, 90202-90204, inclusive, 90217, 90221, 90223, 90229, 90233, 90234, 90237, 90239, 90240, 90243, 90247-90250, inclusive, 90252, 90254, 90256, 90258, 90260, 90263, 90264, 90267, 90269, 90271-90274, inclusive, 90277, 90285-90287, inclusive, 90289, 90293, 90294, 90296, 90297, 90303, 90308, 90319-90321, inclusive, 90325, 90327, 90332, 90333, 90335, 90342, 90345, 90351-90356, inclusive, 90358, 90363, 90364, 90379, 90381, 90383-90385, inclusive, 90388, 90389, 90399, 90402, 90422-90424, inclusive, 90426, 90431, 90434, 90437, 90441, 90453, 90456, 90457, 90459, 90461, and 90463.

Very Truly Yours,



Louis E. Gitomer

7/28/93

Washington, D.C. 20006

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on _____ at _____, and assigned recordation number **7/28/93** **3:05pm** (s).

18349

Sincerely yours,

Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

18349
RECORDATION NO. FILED 1428

JUL 28 1993 3:25 PM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

EQUIPMENT LEASE AGREEMENT, dated as of June 15, 1993, between GATX Capital Corporation, a Delaware corporation ("Lessor"), and the Wheeling & Lake Erie Railway Company, a Delaware corporation ("Lessee"). Any reference to this "Lease" or this "Agreement" shall refer to this Equipment Lease Agreement and, when the context so requires, each Acceptance Notice (as defined below) hereto.

The parties hereto agree as follows:

SECTION 1

DELIVERY AND LEASE OF CARS; TERM

1.1 Lessor shall lease one hundred twenty (120) 4000 cu. ft., 100-ton hopper cars with rotary couplers within the car numbers set forth in Schedule 1 hereto and as more fully described in the applicable Acceptance Notice hereto (each a "Car" and collectively, the "Cars") to Lessee, and Lessee shall lease the Cars from Lessor beginning on the Delivery Date (as defined below) and, subject to renewal pursuant to Section 12 below, ending (the "Term").

1.2 The Cars shall be delivered by Lessor, at its expense and risk, to Lessee at Bellevue, Ohio.

1.3 Lessee shall: (i) accept each Car in writing on the date ("Delivery Date") of delivery pursuant to an Acceptance Notice substantially in the form of Exhibit A hereto (each an "Acceptance Notice") or (ii) reject such Car during such five day period. The Delivery Date shall also be the "Rent Commencement Date."

1.4 This Lease may not be terminated by Lessee for any reason whatsoever. To the extent permitted by applicable law, Lessee hereby waives any right which it may now have or hereafter acquire to terminate or cancel this Lease or to surrender any of the Cars during the Term.

1.5 THIS LEASE SHALL BE EFFECTIVE ON THE EXECUTION AND DELIVERY HEREOF BY LESSEE; subject, however, to the satisfaction of the conditions set forth in Schedule 2 hereto.

SECTION 2

RENTAL PAYMENTS

2.1 Lessee shall pay Lessor monthly rent, in advance, of _____ per Car ("Rent"), at the offices of Lessor described in Section 13.1 hereof.

2.2 (a) The first Rent payment for each Car shall be due and payable on or before or before the applicable Rent Commencement Date and shall be calculated for the period starting on the Delivery Date to and including the last day of the month in which the Delivery Date occurs. Thereafter, Rent shall be paid, in advance, on the first day of each calendar month and shall continue through and including the last month of the Term. In addition, Lessee shall pay the Rent for the last month of the Term on or before the applicable Rent Commencement Date. Such Rent shall be deemed paid and applied to Lessee's Rent obligations as of the Rent Commencement Date.

(b) Lessor shall use reasonable efforts to invoice Lessee each month for the next Rent due hereunder. However, Lessee's nonreceipt of an invoice shall not relieve Lessee of its obligation to make any Rent payment payable hereunder when due.

(c) This is a net lease and shall constitute a "finance lease" under the California Uniform Commercial Code ("UCC"). Lessee's obligation to pay Rent and all other amounts payable under this Lease shall be absolute and unconditional and shall not be affected by, and such payment shall be made without abatement, suspension, deferment or diminution by reason of any circumstance or occurrence whatsoever including, without limitation, any offset, counterclaim, recoupment, defense or other right which Lessee may now or hereafter have against Lessor or any person controlled by it, in control of it, or under common control with it, directly or indirectly, or any assignee of Lessor.

(d) Lessor may, in its sole discretion, terminate its obligation herein to deliver any Car hereunder or renew this Lease under Section 12 hereof at any time if: (a) there is any material adverse change to the general affairs, management, results of operations, condition (financial or otherwise) or prospects of Lessee, whether or not arising from transactions in the ordinary course of business, (b) any Event of Default exists, or (c) if any condition in this Lease is not satisfied by the applicable Delivery Date.

(e) Lessee waives any and all rights and remedies conferred upon Lessee by UCC Sections 10508 through 10522, including (without limitation) Lessee's rights to (i) cancel or repudiate this Lease, (ii) reject or revoke acceptance of the Cars, (iii) recover damages from Lessor for breach of warranty or for any other reason, (iv) claim a security interest in any rejected property in Lessee's possession or control, (v) deduct from Rent payments all or any part of any claimed damages resulting from Lessor's default under this Lease, (vi) accept partial delivery of the Cars, (vii) "cover" by making any purchase or lease of other property in substitution for property due from Lessor, (viii) recover from the

the use or maintenance thereof.

3.3 Lessor represents that except as provided in this paragraph, no other party has any rights arising by, through or under Lessor that might affect Lessee's sole possession and peaceful enjoyment of the Cars. If Lessor subjects any of the Cars to a mortgage, deed of trust, equipment trust, pledge or assignment or similar security arrangement, hereinafter jointly referred to as the "Instrument", Lessor will use reasonable efforts to advise Lessee as contemplated by Section 5.4 below. Lessor will give Lessee notice if the holder of the Instrument asserts that Lessor is in default of the Instrument if such default in any manner results in a third party attempting to acquire title to or possession of the Cars.

SECTION 4

REPRESENTATIONS AND WARRANTIES OF LESSEE

Lessee represents and warrants as of the date hereof that:

4.1 Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of its incorporation.

4.2 Lessee has the full power, authority and legal right to execute and deliver this Lease and perform the terms hereof. This Lease has been, and each Acceptance Notice on execution thereof will be, duly authorized, executed and delivered and constitutes or will constitute, as the case may be, the valid and binding obligations of Lessee enforceable in accordance with its terms.

4.3 Neither the execution and delivery of this Lease nor the performance of the terms hereof by Lessee contravene any law, regulation, judgment, order or permit affecting Lessee or result in any breach of, or constitute an event of default under, any contract or agreement, corporate charter or by-law or other instrument to which Lessee or any of its subsidiaries is a party or by which Lessee or any such subsidiary or any of its or their properties may be bound.

4.4 No consent of the shareholders or the trustee or holder of any indebtedness or obligation of Lessee is a condition to the performance of the terms hereof by Lessee or the validity of this Lease.

4.5 No notice to, filing with, or approval of, any governmental agency or commission is or will be required for the performance of the terms hereof and of each Acceptance Notice by Lessee or for the validity or enforceability of this Lease or Acceptance Notice (other than recordings with the Interstate Commerce Commission (the "ICC")).

Lessor any general, special, incidental or consequential damages, for any reason whatsoever, and (ix) seek specific performance, replevin or the like for any of the Cars.

2.3 If any Rent or other payment hereunder is not paid when due, Lessee shall pay interest thereon at a rate equal to the rate of interest publicly announced by Wells Fargo Bank, National Association, San Francisco, California, or its successor, as its prime rate, as such rate may change from time to time (the "Prime Rate"), plus 3%, or if lower, the highest rate permitted by applicable law.

SECTION 3

REPRESENTATIONS AND WARRANTIES OF LESSOR

3.1 Lessor represents and warrants that it has the lawful right to lease the Cars to Lessee in accordance with the terms hereof.

3.2 THE LEASE OF EACH CAR IS "AS IS, WHERE IS." THE WARRANTY SET FORTH IN SECTION 3.1 HEREOF IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF LESSOR WHETHER WRITTEN, ORAL OR IMPLIED, AND LESSOR SHALL NOT BY VIRTUE OF HAVING LEASED THE CARS BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY. LESSEE ACKNOWLEDGES AND AGREES THAT: (A) LESSOR IS NOT A MANUFACTURER OF OR A DEALER IN PROPERTY OF SUCH KIND AS THE CARS; (B) LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO THE DESIGN, OPERATION, MERCHANTABILITY, DESCRIPTION, CONDITION, QUALITY OR DURABILITY OF THE CARS, THEIR SUITABILITY FOR THE PARTICULAR PURPOSES AND USES OF LESSEE, THE PRESENCE OR ABSENCE OF ANY DEFECTS (WHETHER LATENT OR PATENT), THE POSSIBLE INFRINGEMENT OF ANY PATENT OR TRADEMARK, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE CARS; AND (C) LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY CAR OR ANY INADEQUACY THEREOF FOR ANY PURPOSE, ANY DEFICIENCY OR DEFECT THEREIN, THE USE OR MAINTENANCE THEREOF, ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO, OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR ANY LOSS OF BUSINESS OR FOR ANY DAMAGE WHATSOEVER OR HOWSOEVER CAUSED, as all such risks are to be borne by Lessee. Lessor makes no representation as to the treatment of this Lease, the Cars or the rent for financial reporting or tax purposes. Lessee hereby waives any claim Lessee may have or acquire in the future against Lessor for any loss, damage or expense caused by any Car or any defect therein or

4.6 There is no action or proceeding pending or, insofar as Lessee knows, threatened against Lessee or any of its subsidiaries before any court or administrative agency which might have a materially adverse effect on the business, condition or operations of Lessee or the performance by Lessee of the terms of this Lease.

4.7 No one acting by, through or under Lessee will have or be entitled to a lien, mortgage, charge, encumbrance, security interest or other adverse claim on or in respect of any Car or this Lease (individually a "Lien" and collectively "Liens").

SECTION 5

POSSESSION AND USE OF CARS; MARKINGS; ASSIGNMENT; SUBLEASE

5.1 At all times during the Term, title to the Cars shall be vested in Lessor to the exclusion of Lessee, and the delivery of the Cars to Lessee and Lessee's possession thereof shall constitute a letting only.

5.2 Lessee shall not directly or indirectly, create or incur or suffer to be created or incurred or to exist any Lien of any kind on any Car (other than Liens which Lessee is contesting in good faith and for which reserves approved by Lessor have been set aside on Lessee's books and records) or on any of its rights under this Lease, and if any such Lien shall come to exist, Lessee shall, at its sole cost and expense, promptly remove the same and provide Lessor such written evidence of such removal as Lessor may reasonably request.

5.3 Lessee shall not add, remove or alter the current reporting marks or identification on the cars except as requested by Lessor. Lessee shall at its expense, as soon as practicable after the applicable Delivery Date, stencil the identification marks of the Lessee on each Car, and Lessee shall at its expense restencil each Car as directed by Lessor upon expiration or termination of this Lease.

5.4 Lessee acknowledges and agrees that Lessor may, subject to the terms of this Lease, including, without limitation, Section 3.3 above, sell, assign, grant a security interest in, or otherwise transfer all or any part of its rights, title and interest in this Lease and the Equipment. Upon Lessor's written notice, Lessee shall, if requested, pay directly to such assignee without abatement, deduction or set-off all amounts which become due hereunder. Lessee waives and agrees it will not assert against such assignee any counterclaim or set-off in any action for Rent under the Lease. Such assignee shall have and be entitled to exercise any and all rights and remedies of Lessor hereunder, and all references herein to Lessor shall include Lessor's assignee. Lessee acknowledges that such a sale, assignment, grant or transfer would neither materially change the Lessee's duties nor materially increase the burdens or risks imposed on the Lessee under this Lease. **LESSEE MAY NOT, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, (i) SUBLEASE,**

TRANSFER, DISPOSE OF OR ASSIGN ITS RIGHTS IN RESPECT OF ANY CAR OR ITS OBLIGATIONS UNDER THIS LEASE (except to a successor in interest to all or substantially all of the business of Lessee to which the Car relates, provided, that such successor has a net worth and financial condition greater than or equal to that of Lessee at the time of execution of this Lease as determined in good faith by Lessor prior to such transfer), **OR (ii) ASSIGN, GRANT A SECURITY INTEREST IN, OR OTHERWISE TRANSFER ALL OR ANY PART OF ITS RIGHTS, TITLE AND INTEREST IN AND TO THIS LEASE OR THE EQUIPMENT.**

SECTION 6

MAINTENANCE OF, AND IMPROVEMENT TO, CARS; INSPECTION; RECORDS

6.1 Lessee shall, at its sole cost and expense, maintain the Cars in serviceable condition, free of broken, damaged or missing parts, suitable for the commercial use originally intended, substantially in the same condition as when received by Lessee, normal wear and tear excepted, and meeting applicable standards as prescribed by the Association of American Railroads Interchange Rules ("Interchange Rules") and the Federal Railroad Administration ("FRA") rules and regulations in effect during the Term.

6.2 Lessee agrees to comply, at its sole cost and expense, with all applicable laws, regulations, directives, statutes, ordinances and rules, including, without limitation, the rules of the FRA, the ICC and the Interchange Rules and the rules and regulations of the Environmental Protection Agency (including state agencies thereof or other agencies serving a similar purpose), with respect to the use and maintenance of each Car. If any Part (as defined below), equipment or appliance in or on any Car is altered, added to, replaced, changed or otherwise modified (each, a "Modification" or collectively, "Modifications") on any Car in order to comply with any such laws, regulations, directives, statutes, ordinances or rules, Lessee shall make such Modifications at its own cost and expense and notwithstanding any other provision of this Lease, title thereto shall thereupon immediately vest in Lessor.

6.3 Lessee shall not use or permit any Car to be used in an improper or unsafe manner, in violation of any contract of insurance applicable to the Car or in violation of any applicable law, regulation, directive, statute, ordinance or rule or manufacturers' warranty. Lessee shall not use or permit any Car to be used for the transportation or storage of any Hazardous Material (as defined in Section 7.2(b) below).

6.4 Lessee shall pay for any and all materials and other supplies required for the operation of the Cars.

6.5 Lessee shall keep and maintain and make available to Lessor all records of Lessee's use, operation, inspection, repairs and maintenance of the Cars. Lessor

may inspect any Car at any reasonable time on request to Lessee.

6.6 (a) Lessee may make Modifications to the Cars with new or newly rebuilt parts and materials necessary to the continued use by Lessee of the Cars for their original intended purpose; provided, however, that Lessee shall seek Lessor's prior written consent to any such Modifications with a cost exceeding \$5,000 per Car. No other Modifications shall be made without Lessor's prior written consent, except to comply with Sections 6.1 and 6.2 hereof.

(b) Lessee may remove from any Car any part, addition, accession or other improvement (collectively "Parts") made by Lessee from any Car which: (i) is not required to maintain such Car in accordance with Sections 6.1 and 6.2 hereof, (ii) may be so removed without damage to such Car, and (iii) does not materially reduce the value, utility, marketability or residual value of such Car in Lessor's reasonable judgment (which judgment Lessee shall request in writing before removing any part). Lessee shall retain title to such removed Parts. Title to all other Parts (including any Parts not removed from a Car on return thereof to Lessor) shall irrevocably vest in Lessor when added to or made a part of any Car or on such return, as the case may be, without any cost or expense to Lessor.

SECTION 7

INDEMNIFICATION; TAXES

7.1 Lessee shall indemnify, reimburse and hold Lessor and its successors, assigns, agents and employees harmless from and against all liabilities, costs, expenses (including attorneys' fees and expenses), fines, penalties (and other charges of applicable governmental authorities), damages to property of Lessee or others (including, without limitation, consequential damages), loss of use of property (including, without limitation, any Car) or injury to or death of persons, including, without limitation, agents and employees of Lessee (each a "Claim") which result from the use, leasing, ownership, operation, possession, replacement, maintenance, control, storage, loading, unloading, delivery, redelivery or condition of any Car from the Delivery Date of such Car hereunder until redelivery of such Car to Lessor in accordance with Section 8 hereof. The foregoing indemnity shall cover, without limitation, (i) any Claim in connection with a design or other defect (latent or patent) in any Car, (ii) any Claim resulting from the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from any Car of any Hazardous Materials (as defined in Section 7.2 below), including, without limitation, any Claims asserted or arising under any Environmental Law (as defined in Section 7.2 below), or (iii) any Claim for negligence or strict or absolute liability in tort; provided, however, that Lessee shall not indemnify Lessor for any liability incurred by Lessor as a direct and sole result of Lessor's gross negligence or willful misconduct. Such indemnities shall continue in full force and effect, notwithstanding the expiration or termination of this Lease. Upon Lessor's written demand, Lessee shall assume and diligently conduct, at its sole cost and

expense, the entire defense of Lessor and its agents, employees, successors and assigns against any indemnified Claim described in this Section 7. Lessee shall not settle or compromise any Claim against or involving Lessor without first obtaining Lessor's written consent thereto, which consent shall not be unreasonably withheld.

7.2 For purposes of this Lease, the following capitalized terms shall have the following meanings:

(a) "Environmental Law" means the Resource Conservation and Recovery Act of 1987, the Comprehensive Environmental Response, Compensation and Liability Act, and any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree (in each case having the force of law) regulating or imposing liability or standards of conduct concerning any Hazardous Materials as now or at any time hereafter in effect.

(b) "Hazardous Material" means any hazardous or toxic substance, material, pollutant or other hazardous, toxic or dangerous waste, constituent, or other substance, whether solid, liquid or gas, which is, or during the Term may be, regulated by any Federal, state or local governmental authority.

SECTION 8

RETURN OF CARS

8.1 On the expiration or termination of the Term, Lessee shall assemble all the Cars at safe and accessible locations on storage tracks on the lines of the Lessee. Lessee shall store such Cars at such locations for up to 90 days from the date the last Car arrives for storage at its sole expense and risk. Lessor and Lessee shall jointly inspect the fully assembled Cars during the first 30 days of commencement of the storage period of the last Car to be so assembled to determine if each Car is clean and free of commodities or residue and complies with the standards set forth in Sections 6.1 and 6.2 hereof. At any time during such storage period, and thereafter, within a reasonable period, Lessee shall provide, at its sole risk or expense, transportation of the Cars from its tracks to any location within the Continental United States as reasonably directed by Lessor.

8.2 If any Car is not clean and free of commodities or residue, or does not comply with the standards set forth in Sections 6.1 and 6.2 hereof, Lessee shall promptly correct any such deficiency, at Lessee's sole cost and expense, and Lessor and Lessee shall jointly reinspect the Cars promptly.

8.3 Any Car delivered to Lessor hereunder shall have all accessories and parts installed thereon as were installed at the commencement of the Term and shall be equipped with all other required or permitted Modifications made thereto during the Term

and not retained by Lessee in accordance with Section 6 hereof.

8.4 Lessee shall assemble and repair the Cars pursuant to Sections 8.1, 8.2 and 8.3 hereof. However, any Car not available for inspection and in the condition required by Sections 6.1, 6.2 and 8.1 on the expiration or termination of the Term shall be subject to holdover rentals starting 5 days after such lease expiration or termination at a rate equal to \$225 per Car per month (without proration) or the fair market rental value for the Cars, as reasonably determined by Lessor, whichever is higher. The holdover rent shall then continue until the subject Cars are available for inspection and in the condition required by Sections 6.1, 6.2 and 8.1. Such holdover rent shall be paid on demand or otherwise on the first day of each calendar month, in arrears, until such inspection and proper return of all Cars are completed.

SECTION 9

INSURANCE

(a) Lessee shall obtain and maintain for the Term, at its own expense, (i) "all risk" insurance against loss or damage to the Cars, (ii) commercial general liability insurance (including contractual liability and completed operations coverages) reasonably satisfactory to Lessor, and (iii) such other insurance against such other risks of loss and with such terms, as shall in each case be reasonably satisfactory to or reasonably required by Lessor (as to carriers, amounts and otherwise).

(b) The amount of the "all risk" insurance shall be the greater of the \$20,000 per Car or the "Depreciated Value" specified in Section 10. The self-insured retention with respect to "all-risk" insurance required by the clause shall not exceed \$500,000; otherwise there shall be no deductible with respect to any insurance required to be maintained hereunder.

(c) The amount of commercial general liability insurance required by clause (a) above shall be at least \$5,000,000 per occurrence.

(d) Each "all risk" policy shall: (i) name Lessor as sole loss payee with respect to the Cars, (ii) provide for each insurer's waiver of its right of subrogation against Lessor and Lessee, and (iii) provide that such insurance (A) shall not be invalidated by any action of, or breach of warranty by, Lessee of a provision of any of its insurance policies, and (B) shall waive set-off, counterclaim or offset against Lessor. Each liability policy shall (w) name Lessor as an additional insured and (x) provide that such insurance shall have cross-liability and severability of interest endorsements (which shall not increase the aggregate policy limits of Lessee's insurance). All insurance policies shall (y) provide that Lessee's insurance shall be primary without a right of contribution of Lessor's insurance, if any, or any obligation on the part of Lessor to pay premiums of Lessee, and (z) shall contain

a clause requiring the insurer to give Lessor at least 30 days' prior written notice of its cancellation (other than cancellation for non-payment for which 10 days' notice shall be sufficient). Lessee shall on or prior to the first Delivery Date and prior to each policy renewal, furnish to Lessor certificates of insurance or other evidence satisfactory to Lessor that such insurance coverage is in effect. Lessee further agrees to give Lessor prompt notice of any damage to, or loss of, the Cars, or any part thereof.

SECTION 10

CASUALTIES AND REPORTS: FINANCIAL INFORMATION

10.1 Lessee shall be solely responsible for any loss, theft, condemnation, governmental seizure or damage to any Car. If a Car is lost, stolen, condemned, seized by a governmental authority or damaged beyond repair or is otherwise not useful for any purpose (each event being an "Event of Loss"), then Lessee shall, not later than the next Rent payment after any such occurrence, or if this Lease has expired or been terminated, on demand, but in, either case, no later than 30 days after such expiration or termination, as the case may be, pay Lessor or cause Lessor to be paid the Depreciated Value as defined in Rule 107 of the Field Manual of the AAR Interchange Rules in effect on the date of the Event of Loss ("Depreciated Value"), computed as of the Rent payment date immediately prior to such Event of Loss for each such Car. On receipt of such payment and all other amounts due under this Lease, Rent shall cease with respect to such Car. On payment of all such payments and amounts to Lessor under this Lease, Lessor shall convey to Lessee title to the hulk "AS IS, WHERE IS", WITHOUT REPRESENTATION OF, OR RECOURSE TO, LESSOR, its agents, servants, employees or representatives.

10.2 Lessee shall, without demand, immediately notify Lessor in reasonable detail of any Event of Loss or other accident involving actual or potential damages in excess of \$5,000 relating to any Car or all the Cars.

10.3 Lessee agrees to furnish to the Lessor during the Term:

(a) as soon as possible and in any event within ten (10) days after the occurrence of an Event of Default, a certificate of the Lessee, signed by its chief executive officer or any responsible financial officer, setting forth in detail the nature of such Event of Default and the action which the Lessee proposes to take with respect thereto;

(b) as soon as available, and in any event within sixty (60) days after the end of each of the first three quarters of Lessee's fiscal year, an unaudited consolidated and consolidating balance sheet of Lessee as of the end of such quarter and related unaudited consolidated and consolidating statements of income and retained earnings and changes in financial position of the Lessee for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, setting forth in each case in

comparative form the corresponding figures for the corresponding period of the preceding fiscal year, all in reasonable detail and duly certified (subject to year-end audit adjustments) by a responsible financial officer of the Lessee as having been prepared in accordance with generally accepted accounting principles, consistently applied;

(c) as soon as available, and in any event within one hundred twenty (120) days after the end of each fiscal year of the Lessee, a financial report for the Lessee for such year, including therein a consolidated and consolidating balance sheet of the Lessee as of the end of such fiscal year and related consolidated and consolidating statements of income and retained earnings and changes in financial position of the Lessee for such fiscal year, setting forth in each case in comparative form corresponding figures for the preceding fiscal year, all in reasonable detail and accompanied by an opinion thereon of the Lessee's independent public accountants; and

(d) from time to time such information as the Lessor may request with respect to the financial condition and operations of the Lessee (and Lessor shall have the right to discuss the finances and accounts of the Lessee with the principal officers of Lessee, at such times as Lessor may reasonably request) in order to determine whether the covenants, terms and provisions of this Lease have been and will be complied with by the Lessee.

SECTION 11

DEFAULT

11.1 The following events shall constitute "Events of Default" for purposes of this Lease:

(a) Lessee shall fail or be unable to make any Rent or other payment required hereby in full and such inability or failure shall continue for 5 days;

(b) Lessee shall fail to procure or maintain any insurance coverage required hereby;

(c) Lessee shall fail or be unable to observe or perform any covenant, condition or agreement of Lessee contained herein, other than such as are referred to in clause (a) and (b) above, and such failure shall continue for 30 days after the giving of notice thereof by Lessor;

(d) Any representation or warranty of Lessee contained herein or any representation or warranty contained in any document or certificate furnished to Lessor in connection herewith or pursuant hereto shall be untrue or incorrect in any material respect when made;

(e) Lessee shall apply for or consent to the appointment of, or the taking of possession by, a custodian, receiver, trustee or liquidator of itself or a substantial part of its property, shall become insolvent, shall fail or be unable to pay its debts generally as they become due, or shall cease to conduct its business in its ordinary course;

(f) Lessee shall file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any other federal or state bankruptcy, insolvency or other law relating to the relief of debtors, the readjustment, composition or extension of indebtedness or reorganization; file an answer admitting the material allegations of a petition filed against it in a case under Title 11 of the United States Code or in proceedings relating to the relief of debtors, the readjustment, composition or extension of indebtedness or reorganization; or taking corporate action for the purpose of effecting any of the foregoing; or

(g) Without the application, approval or consent of Lessee, a proceeding shall be instituted in any court of competent jurisdiction, seeking in respect of Lessee an order for relief under the aforesaid Title 11, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a custodian, receiver, trustee or liquidator of Lessee, any substantial part of its property or any of the Cars, or other such like relief in respect of Lessee under any bankruptcy, insolvency or other similar law, and the same shall continue undismissed or unstayed for any period of 60 days.

11.2 Upon the occurrence of an Event of Default, Lessor may, at its option:

(a) enforce performance by Lessee of the terms hereof;

(b) recover damages for Lessee's breach of the terms hereof;

(c) by giving notice to Lessee specifying the Event of Default, accelerate the due date with respect to all rents contemplated by this Lease and due after the date thereof, and, but for the giving of such notice, all such rents, discounted at the Prime Rate in effect at the date of acceleration, and any other amounts due hereunder shall be immediately due and payable;

(d) by giving notice to Lessee specifying the Event of Default, terminate this Lease effective on the date specified in such notice (hereinafter, the "Date of Termination"), and on the Date of Termination, this Lease shall expire and terminate and all rights of Lessee under this Lease shall absolutely cease (but Lessee shall remain liable as herein set forth), and Lessee shall deliver possession of the Cars to Lessor in accordance with Section 8 hereof. Upon such expiration and termination, Lessor shall have the right to immediate possession of the Cars free of any claims of Lessee whatsoever, and Lessor may remove all or any of the Cars, from the possession of Lessee, its agents and affiliates, at Lessee's sole cost and expense, and for such purpose may enter premises where the Cars

are located, and may use and employ any supplies, services, means or other facilities of Lessee, its agents and affiliates, and Lessor shall not be liable for, and shall be held harmless by Lessee from any liability for, damage caused to real or personal property during any such removal; provided that Lessor exercises its rights in a reasonable manner to mitigate any damage to the interests and property of Lessee by selling or re-leasing the Cars. Lessee shall, without further demand, within five (5) days of the Date of Termination pay to Lessor an amount equal to any unpaid rent due and payable for all periods up to and including the Date of Termination, (i) plus all Default Costs (as hereinafter defined), (ii) plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Depreciated Value for all Cars subject to the Lease on the Date of Termination (iii) plus all other sums due Lessor hereunder. Interest at the rate specified in Section 2.3 hereof shall be paid on all amounts due hereunder, including, without limitation, such Default Costs, until paid in full. Following the return of the Cars to Lessor pursuant to this Section 11.2, Lessor shall, within a commercially practicable time, proceed to either sell or re-let the Cars (as hereinafter described) in a commercially reasonable manner.

11.3 Lessee shall, upon demand, reimburse Lessor for all expenses, charges, costs and commissions (including reasonable attorneys' fees and expenses) reasonably incurred by Lessor in enforcing its rights hereunder and in taking possession of, disassembling, overhauling, repairing, maintaining, transporting, insuring, storing or modifying the Cars determined by Lessor to be required to place such Cars in condition suitable for sale, re-lease or use of the Cars (such expenses, charges, costs and commissions sometimes being herein called "Default Costs"). Amounts recoverable under this Section 11.3 shall include reasonable Default Costs incurred after the Date of Termination.

11.4 Lessor shall have the option, if it elects to re-lease any Cars as contemplated in Section 11.2(d) hereof, on or after the occurrence of an Event of Default, whether or not it shall then have possession thereof, to establish conclusively the present value at the Date of Termination of the prevailing Rent value of a Car by entering into a bona fide lease of the Car with a third party which lease shall be free from any and all claims at law or in equity of Lessee.

If Lessor exercises such option, the present worth at the Date of Termination of the prevailing Rent value of the Cars shall be conclusively deemed to be the proceeds of such bona fide lease, to the date on which the Term would have expired but for such termination, discounted at the Prime Rate in effect at the Date of Termination from the dates such proceeds are to be paid to Lessor thereunder to the Date of Termination.

11.5 Lessor shall also have the option, if it elects to sell any Car as contemplated in Section 11.2(d) hereof, on or after the occurrence of an Event of Default, whether or not it shall have possession thereof, to establish conclusively the prevailing sale value of a Car as of the Rent payment date preceding the Date of Termination by consummating a bona fide arm's length sale of the Car to a third party which sale shall be free from any and all claims at law or in equity of Lessee. Lessor may deduct from any such

sale proceeds any or all outstanding Default Costs. The aforementioned option may be exercised by public or private sale, with or without advertisement or publication, as Lessor may determine. Lessor may otherwise dispose of the Cars, hold the Cars idle, or lease the Cars to others (for a period greater or lesser than the balance of the term of this Lease in the absence of the termination), all on such terms and conditions as Lessor may determine and all free and clear of any rights of Lessee and of any claim or right of redemption of Lessee in equity, at law or by statute, whether for loss or damage or otherwise.

11.6 The proceeds of such sale or re-letting, as described in Sections 11.4 and 11.5 hereof, as the case may be, shall be applied, as received by Lessor, first, to pay all Default Costs, second, against the amount of Lessee's obligations under or in respect of this Lease other than Default Costs (such obligations, together with Default Costs, being herein sometimes called "Lessee's Default Obligations"), to the extent not previously paid by Lessee under this Section 11, and third, to reimburse Lessee for the Depreciated Value paid by Lessee to Lessor per Car as a consequence of the termination and to the extent previously paid by Lessee as liquidated damages to (and to the extent retained by) Lessor free of any claims to such payment by Lessee, any trustee or other third party. Any surplus remaining thereafter shall be retained by Lessor. To the extent that Lessee's Default Obligations shall not have been paid when due, Lessee shall forthwith fully pay to Lessor the remaining amount thereof.

11.7 Each and every power and remedy hereby specifically given to Lessor shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, including, without limitation, under the UCC, and each and every power and remedy may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any others. No delay or omission of Lessor in the exercise of any such power or remedy and no renewal or extension of time with regard to any payment due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or any acquiescence therein.

SECTION 12

RENEWAL OPTION

Provided that the Lease has not been terminated and that no Event of Default or event which, with notice or lapse of time or both, would become an Event of Default shall have occurred and be continuing. Lessee may at the end of the initial Term of this Lease elect to renew the Lease with respect to all, but not less than all, of the Cars at their respective expiration dates for _____ months for a mutually agreeable rent not less than _____ per Car for such additional period, which rent shall be paid monthly in advance.

SECTION 13

MISCELLANEOUS

13.1 All demands, notices and other communications hereunder shall be in writing, and shall be deemed to have been duly given when delivered, if personally delivered; or when sent, if mailed certified or registered mail, postage prepaid, or when sent, if transmitted by cable, telecopy or telex, charges prepaid (with electronic evidence of receipt); in each case addressed to the parties at the locations specified below, or such other location(s) as may hereafter be furnished in writing by either party to the other:

To Lessee: Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, OH 44613
Attention: Larry Parsons, President
Telecopy Number: (216) 767-4327

To Lessor: GATX Capital Corporation
Four Embarcadero Center, Suite 2200
San Francisco, California 94111
Attention: Contract Administration
Telecopy Number: (415) 955-3416

13.2 This Lease shall be binding upon and shall inure to the benefit of Lessee, Lessor and, to the extent assignment hereof is permitted hereby, their respective successors and assigns.

13.3 Lessee will, promptly, but in no event later than 45 days after the new markings and Lessor identification are affixed to the Cars by Lessee pursuant to Section 5.3 hereof, cause an addendum to this Lease to be filed with the ICC in accordance with 49 U.S.C. 11303. Lessee will furnish Lessor a copy of such addendum of this Lease as so filed within 5 days after the date of filing.

13.4 This Lease constitutes the entire agreement between the parties hereto.

13.5 Lessee's obligations hereunder shall survive the expiration or termination of this Lease.

13.6 The captions set forth herein are for convenience only and shall not define or limit any of the terms hereof. The language in this Lease and the related documents is to be construed as to its fair meaning and not strictly for or against any party. All payments shall be paid to the address designated by Lessor in the applicable Schedule or otherwise in a writing signed by Lessor.

13.7 Lessee's and Lessor's obligations hereunder shall survive the expiration and termination of the Term to the extent required for full performance and satisfaction thereof.

13.8 **ALL MATTERS INVOLVING THE CONSTRUCTION, VALIDITY, PERFORMANCE AND ENFORCEMENT OF THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW OR CHOICE OF LAW.** This Lease is being executed in the State of California.

13.9 This Lease may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and same instrument; provided, however, that to the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the UCC), no security interest in this Lease may be created through the transfer or possession of any counterpart of this Lease other than the original executed counterpart of this Lease, which shall be identified as such counterpart.

13.10 If any provision of this Agreement shall be held unenforceable or void, such unenforceability or invalidity shall not affect the validity or enforceability of other provisions hereof.

13.11 Lessee and Lessor shall from time to time do and perform such other and further acts and execute and deliver any and all such other and further instruments as may be required by law or reasonably requested by the other to establish, maintain and protect their respective rights and remedies and to carry out and effect the intents and purposes of this Lease.

13.12 If Lessee fails to perform any of its obligations under this Lease, Lessor may perform such obligation for Lessee and Lessee shall, on Lessor's written demand, repay Lessor for all costs and expenses incurred by Lessor in satisfying such obligation.

13.13 **AMENDMENTS, MODIFICATIONS, WAIVERS: NONE OF THE PROVISIONS OF THIS LEASE MAY BE AMENDED, MODIFIED OR WAIVED EXCEPT IN A WRITING SIGNED BY LESSOR AND LESSEE.**

INITIALS LRP (LESSEE)

INITIALS JTS (LESSOR)

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers as of the date first above written.

GATX CAPITAL CORPORATION

By James F. Earl
James F. Earl, Vice President

Title VICE PRESIDENT
Lessor

WHEELING & LAKE ERIE RAILWAY COMPANY

By JRP

Title President & CEO
Lessee

Exhibit A

ACCEPTANCE NOTICE NO. _

This Acceptance Notice No. __, dated June __, 1993 (such date being the "Delivery Date" for this Acceptance Notice), is a part of the Equipment Lease Agreement, dated as of June 15, 1993 (the "Lease"), between GATX Capital Corporation and the Wheeling & Lake Erie Railway Company. The terms used in this Acceptance Notice shall have the meanings given them in the Lease unless otherwise defined herein.

1. Description of Cars; Location of Delivery

(a) Lessor and Lessee represent that the Cars being accepted on the Delivery Date are 100-ton, 4000 cu. ft. rotary coupler equipped open top hopper cars, numbered _
_____ to _____ (inclusive).

(b) Lessor and Lessee represent that the location of delivery shall be the Lessee's lines located in Bellevue, Ohio.

2. Term; Acceptance, Other Confirmations and Covenants

(a) By accepting each Car, Lessee confirms that Car is in serviceable condition, free of broken, damaged or missing parts, is suitable for Lessee's purposes, and meets applicable interchange and safety standards as prescribed by the Interchange Rules and the FRA.

(b) Lessee confirms that on the date hereof (i) all of the Cars listed above were duly accepted by Lessee and became subject to the Lease; (ii) the term of the Lease with respect to said Cars commenced; and (iii) Lessee became obligated to pay to Lessor Rent as provided herein and in the Lease and has paid the Rent from the date hereof to the last day of such month plus the Rent for the last month of the Lease with respect to each Car described in Section 1(a) above.

(c) On the date hereof Lessee confirms that its representations and warranties contained in Sections 4 of the Lease are true and correct, and there exists no Event of Default.

This Acceptance Notice has been duly executed and delivered by the undersigned as of the Delivery Date.

GATX CAPITAL CORPORATION

By _____

Title _____

Lessor

WHEELING & LAKE ERIE RAILWAY COMPANY

By _____

Title _____

Lessee

State of California)
)
County of San Francisco)

On June 22, 1993 before me, Les S. Leventhal, Notary Public,
personally appeared James F. Earl, personally known
to me ~~or proved to me on the basis of satisfactory evidence~~ to be the person whose name
is subscribed to the within instrument and acknowledged to me that he executed the same
in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person,
or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

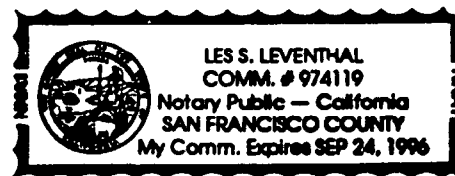
Les S. Leventhal

Notary Public

Capacity Claimed by Signer:

☐ Individual ☒ Corporate Officer Vice President ☐ Partner ☐ Limited
☐ Attorney-in-fact ☐ Trustee Title(s) ☐ General
☐ Other _____

Signer is Representing GATX Capital Corporation



State of Ohio)

County of Stark)

On June 30, 1993 before me, Paula Keller,
Notary Public, personally appeared James B. Parsons,
personally known to me to be the person whose name is subscribed
to the within instrument and acknowledged to me that he executed
the same in his authorized capacity, and that by his signature on
the instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.

Witness my hand and official seal.

Paula Keller
Notary Public
PAULA KELLER
Notary Public, State of Ohio
County of Stark
Commission Expires Oct. 18, 1995

Capacity Claimed by Signer:

☐ Individual ☒ Corporate Officer

☐ Attorney-in-fact ☐ Trustee

☐ Other _____

Signer is representing

President & CEO
Title
Wheeling & Lake Erie Railway Co.

SCHEDULE 1 TO WHEELING & LAKE ERIE LEASE

		UFIX		
90016	90133	90240	90293	90364
90021	90134	90243	90294	90379
90023	90135	90247	90296	90381
90024	90136	90248	90297	90383
90027	90137	90249	90303	90384
90034	90166	90250	90308	90385
90039	90169	90252	90319	90388
90045	90182	90254	90320	90389
90053	90186	90256	90321	90399
90071	90189	90258	90325	90402
90076	90196	90260	90327	90422
90083	90197	90263	90332	90423
90099	90199	90264	90333	90424
90111	90202	90267	90335	90426
90116	90203	90269	90342	90431
90117	90204	90271	90345	90434
90120	90217	90272	90351	90437
90121	90221	90273	90352	90441
90124	90223	90274	90353	90453
90125	90225	90277	90354	90456
90126	90233	90285	90355	90457
90127	90234	90286	90356	90459
90131	90237	90287	90358	90461
90132	90239	90289	90363	90463

CERTIFICATION

I, LOUIS E. GITOMER, have compared this copy of the original Equipment Lease Agreement dated as of June 15, 1993, and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, appearing to read 'L. E. Gitomer', is written over a horizontal line.

Louis E. Gitomer
July 28, 1993